

## Bureau of Prisons, Justice

## § 540.72

not limited to publications which meet one of the following criteria:

(1) It depicts or describes procedures for the construction or use of weapons, ammunition, bombs or incendiary devices;

(2) It depicts, encourages, or describes methods of escape from correctional facilities, or contains blueprints, drawings or similar descriptions of Bureau of Prisons institutions;

(3) It depicts or describes procedures for the brewing of alcoholic beverages, or the manufacture of drugs;

(4) It is written in code;

(5) It depicts, describes or encourages activities which may lead to the use of physical violence or group disruption;

(6) It encourages or instructs in the commission of criminal activity;

(7) It is sexually explicit material which by its nature or content poses a threat to the security, good order, or discipline of the institution, or facilitates criminal activity.

(c) The Warden may not establish an excluded list of publications. This means the Warden shall review the individual publication prior to the rejection of that publication. Rejection of several issues of a subscription publication is not sufficient reason to reject the subscription publication in its entirety.

(d) Where a publication is found unacceptable, the Warden shall promptly advise the inmate in writing of the decision and the reasons for it. The notice must contain reference to the specific article(s) or material(s) considered objectionable. The Warden shall permit the inmate an opportunity to review this material for purposes of filing an appeal under the Administrative Remedy Program unless such review may provide the inmate with information of a nature which is deemed to pose a threat or detriment to the security, good order or discipline of the institution or to encourage or instruct in criminal activity.

(e) The Warden shall provide the publisher or sender of an unacceptable publication a copy of the rejection letter. The Warden shall advise the publisher or sender that he may obtain an independent review of the rejection by writing to the Regional Director within 20 days of receipt of the rejection

letter. The Warden shall return the rejected publication to the publisher or sender of the material unless the inmate indicates an intent to file an appeal under the Administrative Remedy Program, in which case the Warden shall retain the rejected material at the institution for review. In case of appeal, if the rejection is sustained, the rejected publication shall be returned when appeal or legal use is completed.

(f) The Warden may set limits locally (for fire, sanitation or housekeeping reasons) on the number or volume of publications an inmate may receive or retain in his quarters. The Warden may authorize an inmate additional storage space for storage of legal materials in accordance with the Bureau of Prisons procedures on personal property of inmates.

[44 FR 38260, June 29, 1979, as amended at 47 FR 55130, Dec. 7, 1982; 50 FR 411, Jan. 3, 1985; 61 FR 57568, Nov. 6, 1996]

### **§ 540.72 Statutory restrictions requiring return of commercially published information or material which is sexually explicit or features nudity.**

(a) When commercially published information or material may not be distributed by staff or made available to inmates due to statutory restrictions (for example, a prohibition on the use of appropriated funds to distribute or make available to inmates information or material which is sexually explicit or features nudity), the Warden or designee shall return the information or material to the publisher or sender. The Warden or designee shall advise the publisher or sender that an independent review of the decision may be obtained by writing to the Regional Director within 20 days of receipt of the notification letter. Staff shall provide the inmate with written notice of the action.

(b) *Definitions.* For the purpose of this section:

(1) *Commercially published information or material* means any book, booklet, pamphlet, magazine, periodical, newsletter, or similar document, including stationery and greeting cards, published by any individual, organization, company, or corporation which is distributed or made available through any

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means or media for a commercial purpose. This definition includes any portion extracted, photocopied, or clipped from such items.

(2) *Nudity* means a pictorial depiction where genitalia or female breasts are exposed.

(3) *Features* means the publication contains depictions of nudity or sexually explicit conduct on a routine or regular basis or promotes itself based upon such depictions in the case of individual one-time issues. Publications containing nudity illustrative of medical, educational, or anthropological content may be excluded from this definition.

(4) *Sexually explicit* means a pictorial depiction of actual or simulated sexual acts including sexual intercourse, oral sex, or masturbation.

[61 FR 57569, Nov. 6, 1996]

### Subparts G–H [Reserved]

### Subpart I—Telephone Regulations for Inmates

SOURCE: 44 FR 38249, June 29, 1979, unless otherwise noted.

#### § 540.100 Purpose and scope.

(a) The Bureau of Prisons extends telephone privileges to inmates as part of its overall correctional management. Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development. An inmate may request to call a person of his or her choice outside the institution on a telephone provided for that purpose. However, limitations and conditions may be imposed upon an inmate's telephone privileges to ensure that these are consistent with other aspects of the Bureau's correctional management responsibilities. In addition to the procedures set forth in this subpart, inmate telephone use is subject to those limitations which the Warden determines are necessary to ensure the security or good order, including discipline, of the institution or to protect the public. Restrictions on inmate telephone use may also be imposed as a disciplinary sanction (see 28 CFR part 541).

## 28 CFR Ch. V (7–1–01 Edition)

(b) Except as provided in this rule, the Warden shall permit an inmate who has not been restricted from telephone use as the result of a specific institutional disciplinary sanction to make at least one telephone call each month.

[59 FR 15824, Apr. 4, 1994, as amended at 61 FR 90, Jan. 2, 1996]

#### § 540.101 Procedures.

(a) *Telephone list preparation.* An inmate telephone call shall ordinarily be made to a number identified on the inmate's official telephone list. This list ordinarily may contain up to 30 numbers. The Associate Warden may authorize the placement of additional numbers on an inmate's telephone list based on the inmate's individual situation, e.g., size of family.

(1) During the admission and orientation process, an inmate who chooses to have telephone privileges shall prepare a proposed telephone list. At the time of submission, the inmate shall acknowledge that, to the best of the inmate's knowledge, the person or persons on the list are agreeable to receiving the inmate's telephone call and that the proposed calls are to be made for a purpose allowable under Bureau policy or institution guidelines.

(2) Except as provided in paragraph (a)(3) of this section, telephone numbers requested by an inmate will ordinarily be placed on the inmate's telephone list. When an inmate requests the placement of numbers for persons other than for immediate family or those persons already approved for the inmate's visiting list, staff ordinarily will notify those persons in writing that their numbers have been placed on the inmate's telephone list. The notice advises the recipient that the recipient's number will be removed from the list if the recipient makes a written request to the institution, or upon the written request of the inmate, or as provided in paragraph (a)(3) of this section.

(3) The Associate Warden may deny placement of a telephone number on an inmate's telephone list if the Associate Warden determines that there is a threat to institution security or good order, or a threat to the public. Any disapproval must be documented in